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September 28, 1992

HOWARD J. BRAUN

ORIGINAL<sup>T</sup>  
FILE

Donna R. Searcy, Secretary  
Federal Communications Commission  
Washington, D.C. 20554

Re: MM Docket No. ~~92-168~~  
Notice of Proposed Rule Making  
Modifying Renewal Dates

Dear Ms. Searcy:

Enclosed herewith for filing, on behalf of our client, Island Broadcasting Co., are an original and nine (9) copies of its "COMMENTS" in the above-referenced proceeding.

Please direct all inquiries and communications concerning this matter to the undersigned.

Very truly yours,

*Howard J. Braun*  
Howard J. Braun

Enc.

cc: Keith A. Larson, Chief (FCC - By Hand)  
Mary M. Fitzgerald, Esq. (FCC - By Hand)  
Eugenia R. Hull, Esq. (FCC - By Hand)  
David E. Horowitz, Esq. (FCC - By Hand) (all w/enc.)

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Modifying Renewal Dates for )  
Certain Stations Licensed ) MM Docket No. 92-168  
Under Part 74 of the )  
Commission's Rules )

TO: The Commission

COMMENTS OF ISLAND BROADCASTING CO.

ISLAND BROADCASTING CO. ("Island"), licensee of Low Power Television ("LPTV") Stations W38AM, Long Island City, New York, W44AI, Plainview, Hicksville, and Mineola, New York, and W54AY, Brownsville, New York, by its attorneys, pursuant to §1.415 of the Commission's Rules, hereby submits its Comments in the above-captioned rulemaking proceeding, which was initiated by Notice of Proposed Rule Making ("NPRM"), 7 FCC Rcd 4948 (1992). In support whereof, the following is shown:

1. Island's Comments are directed to Paragraph 6 of the NPRM, in which the Commission proposes to grant short term renewals to LPTV stations and TV and FM translators in their next renewal period in order to conform the renewal dates of these stations to the license period of full power TV and FM stations.

2. Normally, under §74.15(d) of the Rules, LPTV licenses are renewed for five-year periods, but the NPRM tentatively concludes (at ¶6) that "one-time short-term renewals" are a worthwhile burden in order to establish greater consistency in the licensing process. While Island

commends the efficiencies entailed in uniform renewal dates for all TV and FM services, Island strongly disagrees with the NPRM's view that short-term renewals should be used in all instances to bring about renewal uniformity.

3. Using New York State's LPTV license renewal dates as an example (because Island is a New York State licensee) Island maintains that an across-the-board short-term renewal approach to renewal date uniformity poses serious procedural and substantive due process problems and burdens, which are improper, unnecessary, and clearly contrary to the public interest. Specifically, the present renewal date for New York's LPTV licenses is June 1, 1993, but the New York full power TV station renewal date is June 1, 1994. Thus, under the NPRM's proposal, Island's LPTV stations would receive only 12-month license renewals in June 1993 and would have to file a second set of renewal applications within that same 12-month period to comply with the June 1994 full power TV renewal date.

4. Island submits that filing two sets of renewal applications within a 12-month period is not only procedurally costly, time-consuming, and economically wasteful, but, more importantly, as a substantive matter, such a requirement improperly exposes licenses to renewal challenges twice within a one-year period. Island realizes that the NPRM does not intend to put LPTV and translator licenses at risk in this fashion, but such risk would be the practical effect of such

short-term renewals under the competing application provisions of §73.3516(e) of the Rules, unless the Commission somehow precludes such competing applications.

5. To avoid the above procedural and substantive problems, Island suggests the following alternative approach for LPTV and translator licenses in all States in which the NPRM's proposal would produce a 12-month or less short-term renewal:

The Commission should devise a special temporary authorization, such as an "interim renewal extension" ("IRE"), and should issue it to all licensees who would otherwise face two license renewals within a 12-month period.

6. Practically speaking, the proposed IRE would simply extend a licensee's present authorization by 12 months, but it would do so in such a way that: (1) the licensee would not be burdened with filing a renewal application for a 12-month or less renewal period; and (2) no "window" would be created by the IRE for renewal challengers to file competing new-station applications during the 12-month extension period. Island believes that the IRE could easily be crafted in such a way as not to run afoul of the prohibition in Section 307(c) of the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. §307(c), against a license being "granted for the operation of a television broadcast station...for a longer term than five years" (emphasis added). The IRE would be a 12-month temporary extension tacked onto a previous five-year grant. Just as the issuance of Special Temporary Authority (an "STA"), pursuant to §73.1635 of the Rules, is not

tantamount to a "grant" of a license, neither should issuance of an IRE be construed as a license "grant".

7. In short, Island agrees with the NPRM that renewal date uniformity is a worthy goal. However, Island urges that the NPRM's concern about potential violation of Section 307(c) of the Act should not prevent it from fashioning a simple authorization mechanism, such as an "IRE," to obviate serious procedural and substantive due process concerns where de minimis renewal periods of 12 months or less would otherwise be created by a renewal uniformity rule.

WHEREFORE, in light of the foregoing, Island respectfully requests that the Commission should adopt a renewal uniformity rule which establishes an IRE procedure for avoiding the filing of a renewal application where there is a gap of 12 months or less between the expiration of present LPTV and translator licenses and the regular renewal date for full power TV and FM stations.

Respectfully submitted,

**ISLAND BROADCASTING CO.**

By Howard J. Braun  
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Dated: September 28, 1992